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ABSTRACT

Two briefs presented to the Interdepartmental Committee on Copyright by the Educational Media Association of Canada are summarized in this position paper. The paper briefly re-defines the special interests that have distinctive roles in the social and cultural influences affecting education. It considers the legal framework within which these roles should be afforded copyright protection commensurate with the new technologies. (MC)

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Educational Media
and
Copyright

Derwyn Davies

a position paper for
Educational Media Assc^n.
of
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EDUCATIONAL MEDIA AND COPYRIGHT

1. The EDUCATIONAL MEDIA ASSOCIATION OF CANADA, aware of the shortcomings of the present Copyright Law, affirms the need to redefine copyright in the light of new technology and of the present social and educational environment while, at the same time, recognizing the legitimate interests of all parties.

2. The Association considers that the framework within which educational media operate can be defined as follows:

   2.1 The role of education in an essentially urban, industrial and highly technological society remains twofold: firstly, the transmission of culture from one generation to the next; secondly, the re-interpretation of society to its incipient members.

   2.2 The social forces push the educational process in two directions -- towards the technological society with its efficiency-conscious corporate power; and towards the democratic ideal proclaiming the value and importance of the individual.

2.3 The implications of the above two points serve to emphasize the vital importance of education to our society

-- in its technological aspect, by the degree of sophistication in higher scientific learning and in general technical competence

-- in its human aspect by the challenge of providing a relatively high level of education for all and of promoting values and critical thinking

3. The Association therefore sees a number of special interests, all with distinctive roles and responsibilities, in the social and cultural influences affecting education.

4. THE CREATOR

4.1 The creator, artist, author, performer, has made a unique and original work. He is entitled to protection for his creation from misuse or plagiarising and he should receive adequate remuneration from those who benefit from his creation.

4.2 But in many modern media, the creation is the joint endeavour on the part of a team of people. While the protection accorded to the

creation should be exactly as it is for the individual, the aspect of copyright related to remuneration is a more difficult point. It would seem best that the copyright should in this case be held not by one person, but by the organization or institution which brought about the creation.

4.3 The creator, performer, artist, is necessary to education, not so much because of the leisure needs of an increasingly work-liberated population but because of the essential nature of the artist's work in interpreting and regenerating society with imagination and insight.

4.4 The patronage role of education in support of professional creative talent is a responsibility which has not yet been fully realized and accepted, but insofar as the purchase and use of creative works has a bearing, the Association recognizes the responsibilities of education in this role.

5. THE PUBLISHER

5.1 The publisher as the agent by whom the creative work is made available to the public has a dual responsibility; to the creator and to the public; his financial investment has to be considered in the light of the exercise of this responsibility.

5.2 The publisher of a work depends on sales of that work to cover production and distribution costs, to show a profit and to finance further publications.

5.3 Continued rights over materials sold are designed to safeguard the publisher's financial investment from injury. Injury might be inflicted through a person copying material instead of buying it. The rights also protect the integrity of the work from misuse in presentation or from plagiarising.

6. EDUCATIONAL NEEDS

6.1 Schools, faced with demands from increasing numbers of students, and attempting to offer more educational experiences to a wider range of student ability and personality, are moving to respond to the challenges. Innovations are being introduced into administration, organization, and into attitudes and philosophies. Specifically, there is a change from the text and authority oriented curriculum to the more open, varied inquiry and experiential approach. The main manifestations of this change go under the appellations "individualization" and "continuous progress". A very significant and noticeable effect of the changes is that it vastly increases the range of materials and of presentation devices needed to provide effective and valuable educational experiences.

6.2 The teacher, functioning in this more open and more demanding environment, needs to have greater resources at his command. He must be able to draw on as wide a range of materials, in their appropriate forms, as his tastes, ideas and professional judgement dictate and as the curriculum allows.

6.3 The student needs learning experiences appropriate to his particular background, ability and interests and therefore needs to have access to materials in as wide a variety and as great an abundance as does the teacher.

6.4 Technology has the potential radically to alter the educational process - for the better if we exercise good judgement. Visual and audio materials can supplement the printed word and students can be exposed to experiences which go far beyond the confines of the classroom.

7. DEFINITIONS

In this brief certain terms are used with specific rather than general meaning:

7.1 The PUBLISHER is the person or organization through whom the created work is made available to the public. We intend this term to include the distributor of film or television works. (The film producer is considered to be the creative entity.)

7.2 COPYING is the process of making a single copy of a part or whole of a work in the same format as the original; i.e., paper copy of a magazine article or a slide set copied from a filmstrip.

7.3 TRANSCRIPTION is the process of making a single copy of part or whole of a work in a format different from that of the original; i.e., a transparency from an illustration in a book or a videotape from a film.

7.4 DUPLICATION is the process of making two or more copies of a part or whole of a work, either in the same or in a different format.

7.5 An EDUCATIONAL INSTITUTION is the effective unit of organization with decision-making and budgetary control over the acquisition of software; it may be a school, school district or county, or college or university.

8. The Educational Media Association of Canada affirms its support for the legal protection of creators' and publishers' rights as embodied in their works insofar as this protection is intended to:

   (a) provide for the creator adequate reward for his creation;

   (b) encourage creative works and their publication;

   (c) make created works readily available to potential users;

   (d) provide for simple procedures for tracing copyright holders.

9. The Association is in favour of an international copyright convention which would make works originating in other countries more accessible to Canadian educational institutions. It recognizes

   (a) the importance of reciprocity agreements with the country of origin of the works;

   (b) the possible need to safeguard the position of publishers within Canada in order that the general availability of published works does not suffer.

10. The Association deems public education to be a special area in the use and re-use of works which embody copyright.

The following parameters are suggested for this special position with regard to applications of technology to works, other than television distribution systems or computer storage of information.

10.1 The individual teacher, acting on his own behalf and using his own resources, should be free to select from all available works in carrying out his teaching duties. (Teaching duties refer specifically to instructional processes with students and not to administrative practices with regard to the educational institution.)

10.2 Permission for the educational institution to copy and/or transcribe should be implicit upon purchase of a work; i.e., one single copy of part or whole for each purchase of a given work.

10.3 Duplication by an educational institution should be allowed for, subject to suitable safeguards designed:

(a) to protect the legitimate interests of the creator and the publisher; and,

(b) to enable the institution to follow simple procedures to establish fees and royalties payable.

10.4 There should be no restriction on the duplication of works which are:

(a) no longer available on the market; i.e., out of print books

(b) not available in the format required by the educational user

11. Television distribution systems pose one of the special problems in relating educational needs to responsibilities in the use of copyrighted works.

11.1 It should be noted that educational institutions in Canada at present make use of controlled access distribution television systems; this is not likely to change drastically in the future. The element of control makes educational television distribution quite distinct from other types of television distribution in that the target audience can be identified accurately, and in that the educator is concerned not only with one transmission but with multiple transmissions of a programme.

11.2 The Association therefore considered as distinct the controlled access television distribution system with a small target audience, say under 2,000 students considered either as a single group or as a

cumulative total for repeated use of a programme within a single teaching period; i. e., a year or semester. Such institutional system use does not threaten the interests of the creator or publisher and the institution should therefore be in a position to use works as indicated in section 8 of this brief.

11. 3 In controlled access television distribution systems with a target audience of over 2, 000 students, the Association considers that the use of copyrighted works should be subject to control and supervision by the educational institution along the following lines:

(a) use of the whole or part of a work as an incidental portion of a radio or television programme transmitted by the institution should be permitted. The use of that programme to be restricted to the defined, target audience; any sale or rental of the programme should be subject to royalty payments to the holder(s) of the copyright of the work incorporated in the programme.

(b) use of the whole or part of a work as a complete or substantial part of a radio or television programme transmitted by an institution should be permitted subject to agreed royalty payments or fees to the copyright holder, based on the size of the target audience. The programme use

again to be restricted to the normal target audience of the institution; sale or rental of the programme to be subject to additional royalty or fee payments.

12. Computer storage of the whole or part of a copyrighted work should be submitted to thorough examination on the part of those groups active in this field, with adequate representation from educational organizations.

This position paper on copyright is a summary of two briefs presented to the Interdepartmental Committee on Copyright in Ottawa on behalf of the Educational Media Association of Canada, the first in April, 1970, and the second in March, 1971. It represents the thoughts and efforts of many people -- the E. M. A. C. members who returned the questionnaires, the members of the copyright committees of E. M. A. C. and of the Manitoba Association of Resource Consultants, and of the executive of E. M. A. C. My thanks are due to all these for their assistance, and in particular, to Quentin Brown of the University of Manitoba. The document has attempted to present an educational view of copyright. Its effectiveness will depend on the efforts of members to develop the ideas further and to make their influence felt.

Derwyn Davies,
Chairman,
Copyright Committee.

May, 1971.